SYED HUSSAIN BIN ABDUL RAHMAN BIN SHAIK ALKAFF & ORS. v. A.M. ABDULLAH SAHIB & CO.

[P.C. (Lord Keith of Kinkel, Lord Edmund-Davies, Lord Roskill & Lord Griffiths) October 10 & 31, 1985]

[Privy Council Appeal No. 52 of 1984]

Landlord and Tenant – Rent-controlled premises – Tenancy agreement – Termination of tenancy – Whether occupants of premises trespassers or tenants – Action for possession – Consent judgment – Whether valid and effective – Control of Rent Act (Cap. 266), s. 14.

In this case the premises had been let by the appellants on a monthly tenancy to one A.A. Mohamed Maideen, who carried on business under the name of A.M. Abdullah Sahib & Co. The tenant died in 1959 and his tenancy was terminated by notice to quit in 1978. The respondents, a firm, were in occupation of the premises. The appellants claimed that the respondents were trespassers and their occupation unlawful and brought an action in the District Court for possession of the premises. The respondents in their defence pleaded that they were in occupation of the premises as lawful tenants and sought the protection of the Control of Rent Act. The issue between the parties was therefore whether the respondents were in occupation as trespassers or as lawful tenants. This issue was not fought out, as there was a consent judgment under which the respondents agreed to quit and deliver up possession of the premises to the appellants. There was a proviso for the stay of execution until certain events occurred. One such event was the compulsory acquisition of the premises by the Government. In March 1980 the Government issued a notice of intention to acquire the land and the Collector of Land Revenue intimated that he required possession of the premises by October 30, 1980. The respondents refused the appellants' request for vacant possession. The appellants then threatened to take out a writ of possession against the respondents, whereupon the respondents brought proceedings seeking to have the consent judgment set aside on the ground that having regard to the Control of Rent Act the District Court had no jurisdiction to grant it. The appellants defended the action on the ground that the respondents by their agreement to the consent judgment had admitted that they were trespassers, unlawfully in occupation of the premises. In the High Court it was held that the consent judgment was a nullity and should be set aside and damages agreed at $50,000 were awarded to the respondents. The appellants appealed to the Court of Appeal but the appeal was dismissed – see [1985] 2 M.L.J. 275. The appellants appealed with leave of the Court of Appeal to the Privy Council.

Held, allowing the appeal: (1) where an owner of premises makes a claim for possession based on averments that the occupant's possession is not protected by the Control of Rent Act and the defendant in effect agrees that this claim is well founded then an order for possession made in the proceedings is valid and effective;

(2) in this case the respondents through their counsel had agreed to the consent judgment which specifically stated that they admitted the appellant's claim. This could only mean that they admitted that the appellant's claim was soundly based, *viz.*, that their occupation was founded upon no legal title but was as trespassers.

Cases referred to:

(1) *Nanyang Gum Benjamin Manufacturing (Pte.) Ltd.* v. *Tan Tong Woo & Ors.* [1978] 1 M.L.J. 233.
(2) *Barton* v. *Fincham* [1921] 2 K.B. 291.
(3) *Thorne* v. *Smith* [1947] K.B. 307.
(4) *Peachey Property Corporation Ltd.* v. *Robinson & Anor.* [1967] 2 Q.B. 543.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Eugene Cotran for the appellants.

R. Karuppan Chettiar (*George Warr* with him) for the respondents.

Cur. Adv. Vult.

Lord Keith of Kinkel (delivering the Judgment of the Board): This is an appeal against a judgment of the Court of Appeal in Singapore dismissing the appellants' appeal against an order of the High Court which set aside as being a nullity a consent judgment which the appellant had on December 18, 1979 obtained against the respondents in the District Court, and awarded damages to the respondents. The consent judgment was for possession of certain premises in Market Street, Singapore and for mesne profits.

In the District Court proceedings the appellants' statement of claim alleged, in brief, that on some unspecified date the premises had been let on a monthly tenancy to one A.A. Mohamed Maideen, who carried on there a business known as A.M. Abdullah Sahib & Co., that this tenant had died in 1959, that his tenancy had been terminated by notice to quit dated June 28, 1978, that the respondents, a firm, were in occupation of the premises, and that their occupation was that of trespassers and therefore unlawful. The appellants on these grounds claimed judgment against the respondents for possession of the premises, an order requiring the respondents to quit and deliver up vacant possession of the premises and mesne profits. By their defence the respondents admitted that they were in occupation of the premises, denied that they were trespassers thereon, contended that they were in occupation as lawful tenants, and sought the protection of the Control of Rent Act (Cap. 266). The issue between the parties was thus whether the respondents were in occupation as trespassers or as lawful tenants. In the latter event there could be no doubt but that they were entitled to the protection of the Control of Rent Act. The issue, however, was not

fought out, because the respondents agreed to a consent judgment against them, dated December 18, 1979, in these terms:

"THIS DECEMBER 18, 1979

UPON THIS ACTION coming on for hearing before His Honour Mr. Rahim Jalil in the presence of Counsel for the plaintiffs and for the defendants and upon the defendants admitting the claim of the plaintiffs.

AND BY CONSENT IT IS THIS DAY ADJUDGED that there be judgment for the plaintiffs against the defendants for possession of the premises known as No. 123A and 123B Market Street, Singapore.

AND IT IS ORDERED that the defendants, their servants and agents and all others DO QUIT AND DELIVER UP VACANT POSSESSION of the said premises to the plaintiffs FORTHWITH.

And the defendants DO PAY the plaintiffs mesne profits at $102.00 per Mohamedan month as from Rajab 1398 (equivalent to 6.6.78) to date of delivery up of vacant possession.

And there be no order as to costs.

Provided that there shall be a stay of execution on the judgment above in so far as it relates to delivery of vacant possession until, either,

1) there is government acquisition of the premises and the Collector has called upon the plaintiffs to deliver up possession of the premises to the Collector or other government authority;

   or

2) the plaintiffs are selling the premises and have given the defendants notice of 6 months' of the intended sale;

   or

3) the plaintiffs are developing the site and have given the defendants 6 months' notice of the intended development and in principle plans for the development have been approved.

Provided further that should the defendants bring on to the premises any other person (which term includes a firm or company) to occupy any part of the premises in any capacity, other than those already on the premises, then the above-stated proviso shall be null and void and the plaintiffs shall be entitled to execute on the whole of the judgment.

DATED this DECEMBER 29, 1979
DY REGISTRAR"

The respondents remained in possession in terms of the consent judgment. On April 10, 1980 the Government of Singapore issued under the Land Acquisition Act (Cap. 272) a notice of intention to acquire the premises compulsorily, and the Collector of Land Revenue later intimated that he required possession by October 30, 1980. The appellants requested the respondents to deliver up possession by that date in accordance with the consent judgment, but they refused to do so and shortly afterwards commenced the present proceedings in the High Court seeking to have the consent judgment set aside on the ground that having regard to the Control of Rent Act the District Court had no jurisdiction to grant it, and also claiming damages. The appellants defended the action on the ground that the respondents, by their agreement to the consent judgment, had admitted that they were trespassers unlawfully in occupation of the premises, but on November 11, 1983 Abdul Wahab Ghows J. held that the consent judgment was a nullity and should be set aside and awarded the respondents damages agreed at $50,000. He took the view that the decision of the Court of Appeal in *Nanyang Gum Benjamin Manufacturing (Pte.) Ltd.* v. *Tan Tong Woo & Ors.*[1] was in point and was binding upon him. The appellants appealed to the Court of Appeal but on April 13, 1984 that Court (Sinnathuray, Lai Kew Chai and Thean JJ.) dismissed the appeal. The appellants now appeal with leave of the Court of Appeal to this Board.

The grounds of judgment in the Court of Appeal, delivered on September 4, 1984 by Thean J., were based essentially upon the proposition that the present case was indistinguishable in principle from the *Nanyang* case, *supra,* which must therefore be examined. In that case the Court of Appeal granted a stay of execution on a writ of possession issued in pursuance of a consent judgment. The report of the case does not make at all clear the circumstances under which the consent judgment had been granted. Wee Chong Jin C.J. delivering the *ex tempore* judgment of the Court said at page 233, after referring to the Control of Rent Act and the English cases of *Barton* v. *Fincham,*[2] *Thorne* v. *Smith,*[3] and *Peachey Property Corporation Ltd.* v. *Robinson & Anor.*:[4]

"We accept the reasoning of the English court that in an action for possession where it is in issue that the premises the subject matter of the action may or may not be controlled premises, the court has no jurisdiction to grant an order for possession unless the facts are placed before the court. The court must be satisfied that it has jurisdiction under the proper sections or paragraphs contained in our Act to grant an order for possession. On the facts of the action before the District Court in 1973 it is clear that the question whether or not the premises in question were controlled premises was in issue and the consent judgment was obtained without prejudice to the position taken by both parties – plaintiffs as well as defendants – one alleging that the premises were not controlled, the other alleging that they were. The consent judgment was for possession of the premises to be surrendered years later.

Now, that being the basis on which the writ of possession was issued we are satisfied that the original judgment was a nullity."

In *Barton* v. *Fincham, supra,* the landlord of a dwelling-house subject to the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 had made an agreement with the tenant that in consideration of a payment the latter would give notice to quit and yield up possession on a certain day. The tenant accepted the payment and gave notice to quit but on the appointed day refused to give up possession. The county court judge made an order for possession on the ground, so it would appear, that the agreement was binding on the tenant. The Court of Appeal held that, the house being subject to the 1920 Act, which does not appear to have been disputed, no order for possession could validly be made unless one or other of the conditions contained in section 5(1) of the Act was satisfied, and that the agreement of the parties did not have the effect of enabling an order to be made against the will of the tenant. This was not a case of consent judgment nor one where there was any dispute about the application of the 1920 Act. It is to be observed that Lord Justice Atkin (as he then was) said at page 299:

'If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the *bona fides* of the admission, the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act."

In *Thorne* v. *Smith, supra,* the landlord of a dwelling-house within the Rent Restriction Acts claimed possession under the Acts on the ground that he required the house for his own occupation. The tenant, to whom a representation to that effect had been made by the landlord, did not contest the claim. A consent order was made, the tenant vacated, and the landlord then sold the house with vacant possession. The tenant thereupon claimed and succeeded in obtaining compensation under section 5(6) of the 1920 Act on the ground that the order for possession was obtained by misrepresentation. One of the grounds upon which the claim was resisted was that the order for possession was a nullity in respect that the court had no jurisdiction to make it. In regard to this argument Bucknill L.J. said at page 314:

"Before making an order for possession the judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant, but if the tenant in effect agrees that the landlord has a good claim to an order under the Acts, I think the judge has jurisdiction to make an order for possession under the Act without further inquiry."

Peachey Property Corporation Ltd. v. *Robinson, supra,* was a case where a landlord obtained judgment by default for possession against the tenant of a dwelling-house subject to the Acts on the ground that the tenant was substantially in arrears with the rent. The master refused the landlord leave to issue a writ of possession on the ground that the judgment by default was of no effect because no consideration had been given by the court, under section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933, as to whether it was reasonable to make an order for possession. The Court of Appeal held that he was right to do so.

It is apparent that none of these English cases is warrant for the proposition drawn from them by the learned Chief Justice in the *Nanyang* case, namely, that in an action for possession where it is in issue that the premises may or may not be controlled premises, the court has no jurisdiction to grant an order unless the facts are placed before the court. The facts of the case are not made sufficiently clear in the report to enable their Lordships to form a view as to its correctness or otherwise. It may be that when the consent judgment in the *Nanyang* case was made in 1973 there was an unresolved conflict as to whether or not the premises were controlled premises, and that the parties agreed on the consent judgment by way of compromise without prejudice to their respective positions. In that situation the consent judgment may well have embodied, within the meaning of Atkin L.J.'s words in *Barton* v. *Fincham, supra,* an agreement by way of compromise inconsistent with the provisions of the Act, which should not have been given effect to by the court.

Section 14 of the Control of Rent Act provides that:

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this part of this Act."

There is no restriction upon the jurisdiction of the court if the premises of which possession is sought to be recorded are not comprised in a tenancy. In the present case possession was sought to be recovered upon the ground that the respondents were trespassers upon the premises, and that is plainly the basis upon which the consent judgment proceeded. The passages which have been quoted

from the judgment of Atkin L.J. in *Barton* v. *Fincham, supra,* and that of Bucknill L.J. in *Thorne* v. *Smith, supra,* are in their Lordships' view sound authority for the proposition that where the landlord makes a claim for possession based on one of the grounds contained in the Acts, and the tenant in effect admits that the claim is well founded, the judge has no duty to insist *ex proprio motu* that the facts be investigated, and that an order for possession made in such circumstances is valid and effective.

Their Lordships are of opinion that by parity of reasoning where an owner of premises makes a claim for possession based on averments that the occupants' possession is not protected by the Acts, and the defendant in effect agrees that the claim is well founded, then an order for possession made in the proceeding is similarly valid and effective. Special considerations might arise if in subsequent proceedings the defendant established by evidence that his agreement was given in pursuance of a compromise which might have involved his being paid a sum of money. Their Lordships prefer to reserve their opinion as to the legal consequences in such a situation. In the present case the respondents made no attempt to adduce evidence of such a compromise. The respondents through their counsel agreed to the consent judgment, which specifically stated that they admitted the appellants' claim. In their Lordships' opinion that can only mean that they admitted that the appellants' claim was soundly based, *viz.*, that their occupation was founded upon no legal title but was as trespassers. The Court of Appeal were unwilling to accept that interpretation, on the ground that the relevant words were words of style common in consent judgments. That may be so, but is not a good ground for refusing to give effect to the words in their ordinary and natural meaning. The Court of Appeal also appear to have been much influenced by their view that the respondents would have had a good defence on the merits, but the fact remains that they did not persist with their defence. Essentially, however, the Court of Appeal fell into error in holding that the *Nanyang* case, *supra,* was an authority necessitating the conclusion which they reached.

For these reasons their Lordships allow the appeal and enter judgment for the appellants with costs here and in the courts below.

Appeal allowed.

Solicitors: *Coward Chance; Le Brasseur & Bury.*

SINGAPORE REPORTS

FALCON PROPERTIES PTE. LTD. v. NG SUN KOK MOULD MAKING CO.

[C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) March 6, 1985]

[Singapore – Civil Appeal No. 53 of 1983]

Landlord and Tenant – Distress – Tenant in arrears of rent – Landlord selling premises – Landlord distraining after completion of sale and registration of transfer – Whether landlord entitled to issue writ of distress – Distress Act (Cap. 20), ss.2, 4, 5, 16 & 17 – Land Titles Act (Cap. 276), ss. 54 & 71 – Control of Rent Act (Cap. 266), s. 28 – Conveyancing and Law of Property Act (Cap. 268), s. 10(1).

The issue in this appeal is whether the appellants were entitled to take out a writ of distress against the respondents. By a written agreement dated June 4, 1980 the appellants as landlords let out certain premises ("the said property") to the respondents for a one-year term from June 1, 1980 to May 31, 1981. The said property is part of a larger piece of land ("Lots 905 and 4187"). On November 25, 1981 the appellants signed an agreement to sell Lots 905 and 4187 to City Developments with vacant possession. The sale was completed on March 24, 1982 and the transfer in favour of City Developments was registered on May 6, 1982 in the Registry of Titles. The appellants obtained leave and issued a writ of distress for $10,000 being arrears of rent on June 8, 1982. The writ was executed on June 17, 1982 when the bailiff seized the goods of the respondents, who applied to set it aside. The District Judge ordered the writ to be discharged on condition that the respondents pay the sum of $10,000 within 10 days. The respondents then appealed to the High Court, which allowed the appeal and ordered the appellants to refund the sum of $10,000. The appellants appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the transaction being governed by the Land Titles Act, under section 54, upon registration of the transfer all the estate or interest of the appellants in Lots 905 and 4187, together with all easements, rights and powers thereto belonging or appertaining, passed to and vested in City Developments as a proprietor thereof. On and from May 6, 1982, they, not the appellants, became the lessor of the said property. They stepped into the shoes of the appellants and became entitled to receive the rents of the said property;

(2) in the result, when the appellants issued the writ on June 8, 1982, they were no longer a lessor of the said property under any lease or agreement of tenancy; nor were they a "person claiming to be entitled in any capacity to receive rents due under any such lease or agreement of tenancy";

(3) it must also be a requirement implicit in section 5(1) of the Distress Act that the person from whom the rent is due or payable is the tenant of the premises of which the distrainor is the landlord;

(4) the appellants were not entitled to take out the writ of distress and the appeal should be dismissed with costs.